D.B. CIVIL SPECIAL APPEAL NO.492/2006
(Madan Lal Vs. Sunil Kumar & Anr.)

Date of Order: 28.07.2006

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE R.P.VYAS

Mr.Manish Shishodia, for the appellant

Dr.Sachin Acharya, for the respondent

Heard learned counsel for the parties and perused the impugned order of the learned Single Judge. An election petition challenging the election of the appellant Madan Lal as Sarpanch, Gram Panchayat, Utrada Bas, Tehsil, Bhadra is pending in the court of learned Civil Judge (Sr.Div.), Bhadra. The first respondent challenged the election on twin grounds. Firstly, improper rejection of the valid votes by the Returning Officer. It was alleged that at the time of scrutiny of the ballot papers, 10 ballot papers were kept aside as doubtful because of each of the said vote was in favour of the election petitioner but because of wrong folding of the ballot pepers, the original seal left its impression in the column of the other candidate Jai Prakash, or above. According to the first respondent such voters had not put any seal against the name of

Jai Prakash or any other candidate and the original seal in anti-clockwise direction was in his column alone and at other place it was only an impression. The first respondent claims that the said votes ought to have been counted in his favour. Secondly, it was alleged that the returned candidate was shown to have secured 490 votes but 5 of the votes counted in his favour were not valid votes as 3 of the ballot papers were carrying only thumb impressions and not the seal and in 2 ballot papers the seal was placed between the names of Madan Lal and Madan Lal S/o Ram Lal and the intention of the voter was not clear and all those 5 votes were liable to be rejected but they were improperly counted by the Returning Officer in favour of the appellant.

The trial court has framed issues for determination of controversy involved. On appreciation of entire material on record the trial court found prima facie there was sufficient material on record and for the purpose of effective determination of issues, it was necessary to inspect and recount of the disputed ballot papers. The learned Single Judge has examined the order of the trial court in depth and detail. The learned Single Judge disposed of the writ petition with the

modification of the order dated 29.11.2005 to the extent that the inspection and recount shall remain limited only to the disputed ballot papers.

It is contended by the learned counsel that the learned Single Judge has failed to consider that there was no sufficient material on record to affirm the order of the trial court for the inspection and recount of the disputed ballot papers. We are not impressed with the contention raised by the learned counsel. A bare reading of the order of the learned Single Judge shows that the requisite details have been given on the basis of which a finding of fact has been recorded. No prejudice is likely to be caused to the appellant in permitting inspection and recount of the disputed ballot papers. No interference is warranted with the order of the learned Single Judge.

The special appeal stands dismissed.

(R.P. VYAS), J. **(N.N.MATHUR), J.**

BKS/-